



June 17, 2019

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Via Email

Re: Brown Act cure and correct demand for actions taken by the Vallejo City Council on June 11, 2019

Dear Mayor Sampayan and members of the Vallejo City Council:

This letter is to call your attention to what we believe are substantial violations of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of actions taken by the Vallejo City Council. As you know, this is our second letter alleging a Brown Act violation in less than a week.

The nature of the violations are as follows.

In its regular meeting on June 11, 2019, the Vallejo City Council, through presiding officer Mayor Sampayan, entered a closed session subsequent to the report of the presiding officer and the members of the city council. This closed session was not described in the agenda for the meeting. Nor was notice of the nature of the closed session communicated orally, which itself is proper only in limited circumstances.

The agenda for the June 11 city council meeting reads, "14. CLOSED SESSION." In the city's official video of the June 11 city council meeting, Mayor Sampayan introduces the closed session by simply saying, "And, uh, that's about all I have. Next is closed session. Sgt. [Mat] Mustard, we are going to be in closed session for a while, so uh— you're going home, okay, sir. Okay. So we will adjourn to closed session."

Shortly thereafter, the video cuts to a title card that reads:

Vallejo City Council
Regular Meeting
June 11, 2019
Adjourned

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a “brief description” of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

As you are also aware, the Vallejo Sunshine Ordinance makes mandatory the Brown Act’s “safe harbor” provisions for items discussed in closed sessions. VMC chapter 2.08.060. “Any action taken without proper agenda disclosure pursuant to this section is subject to invalidation to the same extent as if the policy body were subject to the provisions of Govt. Code, Section 54960.1.” *Id.*

Moreover, the Vallejo Sunshine Ordinance defines an intentional violation of the Brown Act as official misconduct.

The knowing, willful and deliberate failure of any elected official, departmental director, or other managerial city employee to discharge any duties imposed by the Ralph M. Brown Act, the California Public Records Act, or this chapter shall be deemed official misconduct. An elected official found guilty of such misconduct shall be removed from office in the manner prescribed by law. Any departmental director, or other managerial city employee found guilty of such misconduct shall be subject to disciplinary action, up to and including termination of employment, in the manner prescribed by law.

VMC chapter 2.08.140.

Any action taken was not in compliance with the Brown Act because it occurred as the culmination of a discussion in a closed session of a matter which the Act does not permit to be discussed; and there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed; and there was no finding of fact made by the Vallejo City Council that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

In the event it appears to you that the conduct of the Vallejo City Council specified herein did not amount to the taking of action, we call your attention to Section 54952.6, which defines “action taken” for the purposes of the Act expansively, *i.e.*, as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.”

Pursuant to that provision (Government Code Section 54960.1), we demand that the Vallejo City Council cure and correct the illegally taken action as follows:

1. Publicly disclose any discussion that occurred during the closed session of the June 11, 2019 meeting of the Vallejo City Council.
2. Publicly disclose any action taken during the closed session.
3. Void any action that was not fully compliant with the Brown Act and the Vallejo Sunshine Ordinance.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave us no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we will also ask the court to order you to pay our court costs and reasonable attorneys' fees in this matter, pursuant to Section 54960.5.

We also request that you investigate whether any elected official, departmental director, or other managerial city employee engaged in a knowing, willful and deliberate violation to discharge their duties pursuant to Section 2.08.140 of the Vallejo Sunshine Ordinance, and share the results of any investigation with the public.

Sincerely,
Open Vallejo

cc: Solano County District Attorney
California Department of Justice, Civil Rights Enforcement Section